

United States Senate

June 29, 2015

COMMITTEES:
BANKING, HOUSING,
AND URBAN AFFAIRS
BUDGET

FOREIGN RELATIONS
SPECIAL COMMITTEE ON AGING

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
Washington, D.C. 20554

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Dear Mr. Chairman:

I write to express my concerns about the impact of Universal Service Administrative Company's (USAC) intent to deny funding through the FCC's E-Rate program to the "Sweetwater School District Consortium" (the Consortium), a group of 45 school districts in Tennessee that rely on this funding for school broadband and connectivity services.

On May 21, 2015, USAC notified the Consortium in the enclosed letter of its intent to deny E-Rate funding. According to USAC, the funding will be denied because the Consortium did not award the contract to the most cost-effective bidder and failed to demonstrate a valid contract with Education Networks of America Services, LLC (ENA). I understand from the Consortium that this determination came more than 30 months after USAC initially began withholding E-Rate payments without explanation, and that the Consortium repeatedly inquired about the missing payments.

I have enclosed a copy of a letter from the Tennessee Department of Education outlining what is at stake for these schools in the pending decision. The Consortium collectively faces financial exposure for two and a half years of services rendered under the contract, totaling over \$50 million. Moreover, funding for the 2015-2016 school year is now at risk, and I understand it could cost these schools up to \$12 million to ensure that broadband connectivity is not disrupted in the coming year as the schools are transitioning to online testing.

Given the potential impact on 240,000 Tennessee students, please explain in detail why the Consortium's procurement is ineligible for funding, and why that determination took more than two years to reach.

Thank you for your attention to this important matter and for your efforts to ensure that we continue to support access to reliable broadband in Tennessee schools.

Sincerely,



Bob Corker
United States Senator

Enclosures.

E-rate Application Information Request

Date: 5/21/2015

Larry Stein/ Diana Howard
Sweetwater City School District
Phone: 423-337-7051
Fax: 423-337-6773
E-mail: larry.stein@scstn.net; Diana.howard@scstn.net

Response Due Date: 5/28/2015

Dear Applicant,

We have completed our review of FY2013 FCC Form 471 917099 FRN 2500725 and FCC Form 471 919406 FRNs 2508370 & 2508549. Based on the documentation you provided, you failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium and ENA Services, LLC (ENA). In response, you provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract Number 2-225071-00). That contract was signed and executed March 7, 2011. In your response, you also stated "the cost proposals [from AT&T and ENA] to the Sweetwater bid were lower than the cost proposed in the previous consortium procurement with MNPS." You selected MNPS pricing instead of executing a contract with ENA based on the lower pricing offered to Sweetwater. Thus, there was not a contract between Sweetwater City School District Consortium and ENA to provide to USAC demonstrating you selected the most cost effective solution. In addition, the FCC Form 470 issued by Sweetwater City School District Consortium, FCC Form 470# 283390001111946, was issued 1/29/13 and has an Allowable Contract Date (ACD) of 2/26/13. There is no provision in the Metropolitan Nashville Public Schools contract with ENA, or in the underlying RFP and ENA bid proposal, that allows for the Sweetwater City School District Consortium to piggy-back onto that contract. This contract was established prior to the ACD of the Form 470 issued by the Sweetwater City School District Consortium. You have not established that a valid contract exists between Sweetwater City School District Consortium and ENA and all FRNs are denied. Consequently, FY2014 FCC Form 471 945733 FRN 2574934, FY2014 FCC Form 471 947375 FRN 2579179 and FY2015 FCC Form 471 1012581 FRNs 2752206 and 2755911 are denied.

Sweetwater Consortium did not choose the most cost-effective bid offering. ENA Services, Inc. (ENA) and AT&T submitted bids to provide E-rate services. Sweetwater selected ENA to provide its E-rate services. ENA's bid proposal was \$9,336,396, \$ 3 million more than AT&T's \$6,053,804.04 bid. USAC evaluated Sweetwater's competitive bidding process and the services requested and determined that the applicant did not select the most-cost effective offering. Sweetwater awarded maximum points or near maximum points to ENA in all categories besides eligible cost. Sweetwater scored AT&T lower in the categories that are not eligible cost of goods and services. Sweetwater was also afforded an opportunity to explain if special circumstances existed that influenced its selection decision. Sweetwater

Response due: 5/28/2015

stated AT&T's bid had "defects" and provided "incomplete and/or inadequate responses" which "had the cumulative effect of offsetting the value of a lower sticker price." Sweetwater also stated they had a "lack of confidence in ATT's ability to deliver the services requested by the RFP" and indicated "the bid team clearly determined that ATT's bid was deficient and therefore, scored the RFP consistent with that determination." Sweetwater acknowledged that the price differential is "significant." Lastly, Sweetwater indicated that ENA's service offering was unique and was not comparable to AT&T services. A thorough review of the bids provided by ENA and AT&T shows that the bids are similar in the services offered. The Managed Internet Access service, Managed VoIP, and Managed Video Conferencing services offered by both of the services providers in their bids contain similar Network infrastructure, similar Network Support, similar On Premise Network Equipment, similar Monitoring Service, both have similar experience and operate in Tennessee, both have extensive experience with the e-rate program, and both service providers provided references from past customers who were satisfied with the service providers. The circumstances presented by Sweetwater do not justify the selection of a bid over \$3 million more than a competing bid and it has been determined that Sweetwater failed to adhere to the requirements that applicant's select the most cost-effective bid offering; therefore, FY2013 FCC Form 471 917099 FRN 2500725 and FCC Form 471 919406 FRNs 2508370 & 2508549 are denied. Consequently, FY2014 FCC Form 471 945733 FRN 2574934, FY2014 FCC Form 471 947375 FRN 2579179 and FY2015 FCC Form 471 1012581 FRNs 2752206 and 2755911 are denied.

We are providing you with an opportunity to submit further documentation and/or any special circumstances that we should consider during the review.

Lastly, please complete, sign, and date the attached certification and return with your response.

Response Reminders

Please fax or email the requested information to my attention. If you have any questions or you do not understand what we are requesting, please feel free to contact me.

It is important that we receive all of the information requested **within 7 calendar days** so we can complete our review. **Failure to respond may result in a reduction, denial, or rescinding of funding. If you need additional time to prepare your response, please let me know as soon as possible.**

Thank you for your cooperation and continued support of the Universal Service Program.

Fabio Nieto

Associate Manager, Special Compliance

30 Lanidex Plaza West | Parsippany, NJ 07054

T: 973.581.5045 | F: 973.599.6552

Fabio.Nieto@sl.universalservice.org

Response due: 5/28/2015

Special Compliance Information Request Certification

Complete and return the enclosed Certification to the Schools and Libraries Division (SLD). If the applicant's authorized representative completed the information in this document, please *attach a copy of the letter of agency or other agreement* between the applicant and consultant authorizing them to act on the school or library's behalf.

Please note that if an authorized representative signs this form, an authorized school or library official is also required to sign in the space provided below.

Note: If a consultant was used, a school official MUST sign below.

CERTIFICATION	
<p>I certify that I am authorized to make the representations set forth in the responses to the inquiry on behalf of Sweetwater City School District the entity represented on and responding to the inquiry, and am the most knowledgeable person with regard to the information set forth therein. I certify that the responses and supporting documentation to the inquiry are true and correct to the best of my knowledge, information and belief. I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I acknowledge that false statements can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.</p>	
<p>I declare under penalty of perjury that the foregoing is true and correct. Executed on ____ day of _____, 2015 at _____[city], _____[state].</p>	
Signature	Date
Print Name	Title
Employer	
Telephone Number	Fax Number
Email Address	
Address	
Authorized School or Library Official's Signature and Title	Date
Print Name of Authorized School or Library Official Named Above	



BILL HASLAM
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
NINTH FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

CANDICE MCQUEEN
COMMISSIONER

June 18, 2015

The Honorable Lamar Alexander
United States Senator
455 Dirksen Senate Office Building
Washington, DC 20510

RE: The Federal Communications Commission / Sweetwater E-rate Consortium

Dear Senator Alexander:

The Tennessee Department of Education is in the unique position to support school districts across our state in an appeal to the Universal Services Administrative Company (USAC), the entity that reviews applications for E-rate for the Federal Communications Commission (FCC). In Tennessee, 45 districts are part of a district-led consortium, which provides them with technology services and associated E-rate reimbursement. Last month, USAC indicated that it would deny an E-rate application for this district-led consortium. As a result, these districts face two deeply concerning consequences:

1. Districts are at risk of losing E-rate funds for 2015-16, severely impacting their ability to maintain internet connectivity for 12 months. Without the E-rate benefits these districts will collectively need to pay \$12 million for service during the 2015-16 school year. The loss of internet connectivity would be detrimental to the instruction of students in the affected districts as well as the day-to-day operations of districts. Additionally, in the next school year, the state is moving to an online testing environment for all high-stakes assessments. The impact of this change requires that all districts have sustainable connectivity to administer both the assessment and practice tools to students.
2. Districts are at risk of having to reimburse amounts subsidized by the vendor over the past two and half years of this agreement. The total exposure of this obligation is in excess of \$50 million.

Our desire is to find an immediate solution for the 2015-16 school year for these districts regardless of the vendor provider. Our ask of your office is to bring to the attention of the FCC the dire consequences of this pending decision to districts, families, and students in Tennessee. We ask that your office seek the FCC's assistance in finding a solution to ensure that our districts are held harmless while this process is concluded.

Our goal, as stated, is to support our districts, and in turn, provide the resources necessary to support the nearly one million students in Tennessee. We appreciate your attention to this important matter.

Sincerely,

A handwritten signature in cursive script that reads "Candice McQueen".

Dr. Candice McQueen
Commissioner of Education

cc: Sen. Bob Corker, Rep. Chuck Fleischmann, Rep. Diane Black, Rep. Jim Cooper, Rep. Joe Duncan, Jr., Rep. Phil Roe, Rep. Marsha Blackburn, Rep. Scott DesJarlais, Rep. Stephen Fincher, and Rep. Steve Cohen.



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 23, 2015

The Honorable Bob Corker
United States Senate
185 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Corker:

Thank you for your inquiry regarding the letter sent by the Universal Service Administrative Company (USAC) to the Sweetwater City School District Consortium (Sweetwater or the Consortium) notifying Sweetwater that USAC intends to deny E-rate funding to the Consortium. Upon receiving your letter, I asked FCC staff to look into the matter. In light of the fact that any USAC decision may come to the Commission on appeal, it would not be appropriate for me to offer an opinion on the merits of USAC's review of the Sweetwater applications at this stage in the process. However, I can tell you that USAC has followed and will continue to follow its standard practice for reviewing this type of application, and Sweetwater will continue to be given every opportunity to offer evidence and explain how its applications are consistent with the E-rate rules.

As you know, the E-rate program is designed to provide eligible schools, libraries and consortia of schools and libraries with discounts on eligible Telecommunications, Internet access, and internal connections (WiFi equipment). Broadband connectivity to and within schools and libraries is not a luxury – it is absolutely necessary to prepare our students for the 21st Century. Recognizing the importance of E-rate to our nation's schools and libraries, in 2014 the FCC adopted two orders reorienting the program to focus on broadband support and otherwise modernizing the program.

A hallmark of the program has always been its competitive bidding rules. In order to maximize the benefit of the federal and local money spent for E-rate eligible services, E-rate participants must seek competitive bids on eligible services. E-rate applicants do not necessarily need to select the lowest price bid, but when evaluating the bids they receive, E-rate applicants must use price as the primary factor in their bid evaluation and they must select the most cost-effective option. These requirements are a crucial part of protecting the integrity of the program and safeguarding it against waste, fraud, and abuse. It is essential to ensure that funds collected from ratepayers are being used as efficiently as possible. Failing to strictly enforce these requirements would also frustrate the program's ability to meet the broadband funding needs of all participating schools and libraries.

With respect to Sweetwater's applications, for each of the funding years at issue, USAC has sought, received, and reviewed the documentation supporting the Consortium's application. That documentation shows that Sweetwater selected ENA as its broadband provider despite the fact that AT&T offered to provide equivalent services for substantially less money. According to USAC's letter notifying Sweetwater of its intent to deny funding, the annual difference in price between ENA and AT&T for essentially the same services is more than \$3 million: ENA bid more than \$9 million and AT&T bid slightly more than \$6 million. As I am sure you can

appreciate, USAC had an obligation to inquire further about the basis for the Consortium's decision upon learning of the significant price differential between the bids received by the Consortium for broadband services.

In addition to the cost-effectiveness issue, USAC has sought evidence from Sweetwater that a signed contract with ENA exists for the services at issue. During the time at issue, the program rules required applicants to have a signed contract in place prior to applying for E-rate support. According to USAC's intent to deny letter, ENA has not provided evidence that a signed contract was in place between Sweetwater and ENA.

It is my understanding that Sweetwater has responded to USAC's requests for information, and USAC is reviewing that response. If USAC ultimately determines that Sweetwater violated the E-rate rules, USAC will notify Sweetwater of its determination, and Sweetwater will have a full opportunity to appeal that ruling, first to USAC and then to the Commission.

In closing, I want you to know that I share your concern about the length of time it has taken to address Sweetwater's applications. We are working closely with USAC to improve the application and review processes and will continue to push forward on such improvements. I have asked my staff to keep your staff apprised of the status of the matter. If you have any further questions, please reach out to us for more information.

Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a horizontal line above it.

Tom Wheeler